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7 Attorneys for Plaintiff
RES-CARE, INC.

8
9 UNITED STATES DISTRICT COURT
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION
12

13 RES-CARE, INC.,

14 Plaintiff,

15 v.

16 ROTO-ROOTER SERVICES
COMPANY, ROTO-ROOTER
17 CORPORATION, BRADFORD-WHITE
CORPORATION, LEONARD VALVE
18 COMPANY, and DOES 1 through 20,
inclusive,

19 Defendants.
20

No. C-09-03856 EDL

JOINT FRCP RULE 26(F) STATEMENT

Date: December 1, 2009
Time: 10:00 a.m.
Place: Ctrm E, 15th Fl.
Judge: Honorable Elizabeth D. Laporte

Complaint Filed: August 21, 2009

21 Pursuant to FRCP 26(f), Civil L.R. 16-9(a), and this Court's Standing Order, the
22 parties to the above-entitled action certify that they met and conferred prior to the Initial
23 Case Management Conference scheduled for December 1, 2009 in this case and submit
24 this Joint Case Management Statement.

25 **1. Jurisdiction and Service:**

26 **Plaintiff:** Plaintiff initiated this case in this Court on August 21, 2009. This
27 Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331. The action is brought
28

1 under 29 U.S.C. §§ 1104 and 1132. Plaintiff also seeks declaratory and injunctive relief
2 pursuant to 28 U.S.C. § 2201.

3 **Defendants:** Ken Simoncini, Simoncini & Associates, attorneys for Roto-
4 Rooter Services Company and Roto-Rooter Corporation; William Cremer and Thomas
5 Pender, Cremer, Spina, Shaughnessy, Jansen & Siegert LLC, attorneys for Leonard
6 Valve Company; and Joseph C. Wright, Law Office of Joseph C. Wright, attorneys for
7 Bradford White Corporation.

8 **2. Facts:**

9 In this action, Res-Care seeks indemnification and contribution from
10 Defendants based on their proportionate share of liability for claims for which Res-Care
11 settled and paid damages for in the matter of *Conservatorship of the Person and Estate*
12 *of Theresa Rodriguez v. Res-Care, Inc., et al.*, San Mateo Superior Court Case No.
13 114740 (the "Underlying Action"). Res-Care was sued in the Underlying Action for
14 damages sustained by a former resident of a RES-CARE facility, Theresa Rodriguez, a
15 developmentally disabled adult, who suffered serious burn injuries as the result of a
16 scalding incident while being showered. To avoid the cost and risk of further litigation,
17 Res-Care agreed to a monetary settlement of the Underlying Action and, pursuant to a
18 settlement agreement negotiated among Res-Care, RCCA Services and Ms. Rodriguez
19 (the "Rodriguez Settlement"), Res-Care paid the settlement amount of 8.5 million dollars
20 to the conservator of Ms. Rodriguez on August 26, 2008, in exchange for her release of
21 all claims against Res-Care and RCCA Services. Res-Care contends that Ms.
22 Rodriguez' injuries were caused in whole or substantial part by a malfunction in the
23 water heating system at the McGarvey Home. That water heating system is comprised
24 of a water heater and mixing valve. The water heater was designed, manufactured and
25 distributed by Defendant Bradford White. The mixing valve was designed, manufactured
26 and distributed by Defendant Leonard Valve. Defendant Roto-Rooter sold, installed and
27 serviced the Bradford White water heater just days prior to and after the scalding
28 incident.

1 **3. Legal Issues:**

2 A comprehensive list of the legal disputes in this matter cannot be given at
3 this time because discovery has not yet begun and there is not yet enough information to
4 discern all of the legal issues that are bound to arise. However, without limitation and
5 without waiver of any parties' rights, remedies, or positions, the parties have identified
6 the following legal issues:

7 (a) Whether Defendants had a duty to properly design, manufacture,
8 sell, install, analyze, inspect, repair, equip and/or supply adequate warnings regarding
9 the Water Heater System.

10 (b) Whether Defendants negligently and carelessly designed,
11 manufactured, sold, installed, analyzed, inspected, repaired, equipped and/or supplied
12 with inadequate warnings the Water Heater and Mixing Valve.

13 (c) Whether Defendants knew, or in the exercise of reasonable care
14 should have known, that the Water Heater and Mixing Valve were defective and
15 dangerous products, unsafe for the purpose and use for which each was intended, and
16 likely to cause injury to persons.

17 (d) Whether the acts and omissions of Defendants' were the cause-in-
18 fact and proximate cause of Ms. Rodriguez' injuries and/or shared in the liability for the
19 harm she suffered.

20 (e) Whether Defendants are jointly and severally liable for the injuries,
21 and damages that Ms. Rodriguez suffered.

22 (f) Whether Res-Care is entitled to indemnity and/or contribution from
23 Defendants toward the amounts it was required to pay to resolve the Underlying Action,
24 based on principles of comparative equitable indemnity and comparative fault.

25 **4. Motions:**

26 The parties presently do not anticipate filing any motions, but reserve the
27 right to do so.
28

1 **5. Amendment of Pleadings:**

2 None are anticipated at this time.

3 **6. Evidence Preservation:**

4 The parties have met and conferred and confirmed the preservation of all
5 electronic and other evidence.

6 **7. Disclosures:**

7 The parties will shortly be exchanging their Initial Disclosures. The parties
8 are disclosing persons with knowledge of the claims and identifying relevant documents
9 supporting claims and defenses.

10 **8. Discovery:**

11 Substantial discovery was conducted in the Underlying Action. This time
12 includes time spent propounding and responding to written discovery, document
13 production, and depositions, including expert depositions. The Northern District of
14 California has held that deposition testimony and discovery responses from a prior state
15 court action, unless inadmissible for another reason, are admissible in a Federal court
16 action. See e.g. *Erdmann v. Tranquility Inc.*, 155 F. Supp. 2d 1152, 1155 (N.D. 2001).

17 The parties will meet and confer after the initial exchange to determine the
18 necessity for additional discovery.

19 **9. Class Actions:**

20 Not applicable.

21 **10. Related Cases:**

22 *Conservatorship of the Person and Estate of Theresa Rodriguez v. Res-*
23 *Care, Inc., et al.*, San Mateo County Superior Court, Case No. 114740. This matter has
24 settled with the only remaining issue before the state court being Leonard Valve's
25 petition for attorneys' fees and costs and Res-Care's Motion to Strike same.

26 **11. Relief Sought:**

27 Plaintiff seeks the following relief:
28

1 (a) All costs, damages, attorneys' fees, interest or any other remedies
2 or expenses incurred in the Underlying Action and Rodriguez Settlement.

3 (b) For a declaration that Defendants are liable to Res-Care for
4 indemnity and contribution for all costs, damages, attorneys' fees, interest or any other
5 remedies or expenses incurred in the Underlying Action and Rodriguez Settlement.

6 **12. Settlement and ADR:**

7 The parties have agreed to an early Mediation with Edward Infante at
8 JAMS in San Francisco. The parties are working together to find mutually agreeable
9 dates.

10 **13. Consent to Magistrate Judge for All Purposes:**

11 The parties consent to have a Magistrate Judge conduct all further
12 proceedings.

13 **14. Narrowing of Issues:**

14 The parties intend to meet and confer regarding the possible narrowing of
15 issues in the case. The parties anticipate that such a meeting will be most productive,
16 and accordingly should be scheduled, promptly following the exchange of Initial
17 Disclosures and relevant documents.

18 **15. Scheduling:**

19 The parties propose the following trial schedule:

20 Discovery Cutoff: July 1, 2010

21 Expert Designation Deadline: August 1, 2009

22 Deadline to Hear Dispositive Motions: September 17, 2010

23 Expert Discovery Cutoff: September 30, 2010

24 Pre-Trial Conference: October 18, 2010

25 Trial Date: November 8, 2010

26 **16. Trial:**

27 Plaintiff anticipates that this case will be resolved by way of a 8-10 day
28

1 bench trial. Defendants will not stipulate to a bench trial and anticipate that this case will
2 be resolved by way of a 12-14 day jury trial.

3 **17. Disclosure of Non-party Interested Entities or Persons:**

4 The Parties have filed Disclosure Statements pursuant to FRCP Rule 7.1
5 and a Certification of Interested Entities or Persons with their first appearance.

6 **18. Such other matters as may facilitate the just, speedy and inexpensive**
7 **disposition of this matter:**

8 None at this time.

9 DATED: November 24, 2009

HANSON BRIDGETT LLP

10 By: James A. Napoli

11 JAMES A. NAPOLI
12 JILL N. CARTWRIGHT
13 AMELIA MIAZAD
Attorneys for Plaintiff
RES-CARE, INC.

14 DATED: November __, 2009

SIMONCINI & ASSOCIATES

15 By: _____

16 KENNETH SIMONCINI
17 KERRI A. JOHNSON
Attorneys for Defendants
ROTO-ROOTER SERVICES COMPANY
AND ROTO-ROOTER CORPORATION

18 DATED: November 24, 2009

CREMER, SPINA, SHAUGHNESSY,
JANSEN & SIEGERT, LLC

19 By: William R. Cremer

20 WILLIAM CREMER
21 THOMAS PENDER
Attorneys for Defendant
22 LEONARD VALVE COMPANY

23 DATED: November __, 2009

LAW OFFICE OF JOSEPH C. WRIGHT

24 By: _____

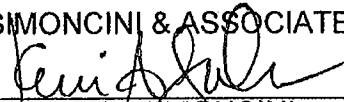
25 JOSEPH C. WRIGHT
Attorneys for Defendant
26 BRADFORD WHITE CORPORATION

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12 KERRI A. JOHNSON
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14 ROTO-ROOTER SERVICES COMPANY
15 AND ROTO-ROOTER CORPORATION

16 DATED: November __, 2009

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18 JANSEN & SIEGERT, LLC

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20 WILLIAM CREMER
21 THOMAS PENDER
22 Attorneys for Defendant
23 LEONARD VALVE COMPANY

24 DATED: November __, 2009

25 LAW OFFICE OF JOSEPH C. WRIGHT
26 By: _____
27 JOSEPH C. WRIGHT
28 Attorneys for Defendant
BRADFORD WHITE CORPORATION

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SIMONCINI & ASSOCIATES

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17 KERRI A. JOHNSON
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21 THOMAS PENDER
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LEONARD VALVE COMPANY

22 DATED: November 24, 2009

LAW OFFICE OF JOSEPH C. WRIGHT

23 By: _____

24 JOSEPH C. WRIGHT
25 Attorneys for Defendant
BRADFORD WHITE CORPORATION